NO. 43877-1-II

COURT OF APPEALS FOR DIVISION II

STATE OF WASHINGTON

SHAOUL S. HAI
Appellant-Plaintiff,

v.

STL INTERNATIONAL, INC., AND TSA STORES, INC.,
Respondents-Defendants.

BRIEF OF APPELLANT

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I. Introduction

In this choice of law case, the acts of both STL International, Inc. and TSA Stores, Inc. injured Plaintiff Shaoul Hai. Importantly, although Mr. Hai was injured in a Texas store owned by TSA, the defective product was designed, marketed, and sold by STL, a Washington company, in Washington. TSA, a company headquartered in Colorado, made critical decisions in Colorado regarding the safety and placement of the inversion table in its retail stores that contributed to Mr. Hai's injuries. This conduct outside the State of Texas caused Mr. Hai's injuries.

The totality of contacts with this case, rather than the location of the injury, controls the choice of law analysis. *Johnson v. Spider Staging Corp.*, 87 Wn.2d 577, 580, 583, 555 P.2d 997 (1976) (recognizing Washington's strong interest in ensuring manufacturers within its borders create safe products). Because a Washington company failed to design a locking mechanism on the inversion table, the most significant contacts in this suit occurred in Washington. The policies embodied by Washington law to ensure safe products would be advanced by the application of its law. Because applying Texas law (and its statute of limitations) to dismiss this suit, advances no state's policies, this Court should reverse the superior court's decision to grant summary judgment.

II. Assignment of Error

1. The trial court erred in granting summary judgment to the defendants and in determining Texas law applies over Washington law.

III. Issues Pertaining to Assignment of Error

1. Under the totality of the contacts, does Washington products liability law apply when:
   - The product was defectively designed in Washington,
   - The product manufacturer is a Washington company,
   - The product warnings were sent from Washington;
   - The product marketing occurred in Washington;
   - The product was distributed pursuant to a contract signed in Washington,
   - The product was distributed to the retailer F.O.B. in Washington, and
   - Washington has an interest in encouraging the manufacture of safe products, yet the damage occurred in another state?
2. Did the trial court properly apply Texas law to a Colorado company that purchased the product from a Washington company when the Colorado company made critical decisions causing the plaintiff's injury in Colorado, and not in Texas?

IV. Statement of the Case

A. Mr. Hai was injured by a product defectively designed in Washington.

1. The injury occurred due to a design defect and acts occurring outside the state of Texas.

On February 8, 2009, Mr. Hai, a Texas resident, was shopping for a stationary bike at a local retailer owned by Defendant TSA (the "retailer"). Clerk's Papers (CP) at 166; Appendix A, at 1-2[1]. Unfortunately for Mr. Hai an inversion table labeled the Teeter Hang-Up, which was designed and manufactured by Defendant STL was located near the stationary bikes and was not locked down or otherwise secured. CP at 29. While looking at another piece of equipment, Mr. Hai tripped on the bottom support tubing of the inversion table causing it to spring into action, flipping him into the air and causing him to fall and severely injure his neck. CP at 29. As he waited for an ambulance to arrive, the manager of the store chained down the Teeter Hang-Up so it would not move or injure other customers. CP at 29.

As a result, Mr. Hai suffered a fractured neck, which forced him to wear a neck brace for several months. CP at 60. Mr. Hai regularly

[1] Appendix A is the complaint. The complaint was not included in the Clerk's Papers, but will be included in the record as supplemental Clerk's Papers under RAP 9.10.

experienced headaches and consistent numbness in his feet and arms as a result of his injuries. CP at 60. Further, due to his limitations and inability to turn his neck more than 30 percent, Mr. Hai has been given a permanent disability classification. CP at 60, 63.

Had either the product designer or the retailer taken better precautions and followed industry standards, it is likely that Mr. Hai's injury would not have occurred, or it would have been less significant. CP at 162, 163. The designer's omissions and actions were a substantial factor in Mr. Hai's injury. CP at 163.

2. STL designed and marketed the inversion table in Washington.

The defendant product designer, STL, is a Washington corporation. CP at 129. It designed the conceptualization of the product in question, the Teeter Hang-up, primarily in Washington, where it also developed a marketing strategy for the product and issued warnings for its use. CP at 151.

The Teeter Hang-Up is an inversion table. CP at 178. Users of an inversion table secure their ankles in the table's devices, and once balanced, move their arms to rotate on the table. CP at 178. Some users use the table to rotate vertically upside down with their feet in the air and head just above the ground. CP at 178. The Teeter Hang-Up owner's

manual specifically cautioned users to keep bystanders away from the inversion table during use. CP at 178. Because the table is sensitive enough to respond to arm movements, the manual specifically cautions: "To reduce tipping hazard, confine all inverted activities to smooth movements." CP at 178.

The product designer issued warnings for this product, which refer consumers to contact its Washington office for assistance. CP at 177–90. In December 2008, the product designer provided the retailer with a removable "bicycle lock" for its inversion tables to secure the table to its frame when the inversion table is not used. CP at 197; CP at 178. The product designer admonished the retailer to ensure that the lock was installed on the table and to re-lock the table after any product demonstrations. CP at 178. This lock, however, was removable and was not "built-in" to the table, despite the inherent danger of inversion tables without built-in locks compared to tables with built-in locks. CP at 162-63; CP at 162. The inherent danger is due to the foreseeability that the lock is not used and a person could come into inadvertent contact with the unlocked equipment and suffer an injury, which is the very thing that happened to Mr. Hai. CP at 162.

3. TSA's negligent decisions occurred in Colorado.

TSA, the owner of the retail chain store that sold and displayed this product, is a Delaware Corporation that conducts business in many states and operates 13 stores in Washington. CP at 137; CP at 192.

The layout of the store was a substantial factor in the accident. CP at 162. These chain stores are designed as part of a corporate-wide marketing strategy, which is allegedly a trade secret.[2] The retail chain made a corporate-wide decision to display the Teeter Hang-Up near other fitness equipment. CP at 144.

Not only was the placement within each store decided in Colorado, but the retailer also made the decision both to carry and to display the Teeter Hang-Up in Colorado. CP at 162. Again, this product, unlike other inversion tables, such as the Reebok inversion table, does not have a built-in lock. CP at 162. In fact, the retailer mandated the use of the lock on all tables on display, demonstrating that it appreciated the risk and foreseeability of an unlocked inversion table injuring customers. CP at 199. The retailer, however, did not have adequate safety procedures for the Teeter Hang-Up, as evidenced by the device actually remaining in an operational state without a lock. CP at 162. Because the Teeter Hang-Up

[2] The corporate-wide marketing strategy was under a protective order and not part of the record in front of the trial court.

was in an operational state, without its lock, it was foreseeable that a customer could come into inadvertent contact with the inversion table, springing it into action and likely suffer an injury. CP at 162.

Additionally, the product designer signed the contract for the retailer's procurement of its products in Washington, and the retailer signed the contract in Colorado. CP at 151. The F.O.B. establishes that the retailer took possession of its Teeter Hang-Ups in Puyallup, Washington, and the product designer warned the retailer of the need to affix an exterior lock to its products in a letter sent from its Washington address.[3] CP at 215-23; CP at 188.

B. The decision on summary judgment is reviewed *de novo*.

Mr. Hai filed suit in Washington under its products liability laws. Appendix A, at 1,5. Both defendants moved for summary judgment. CP at 92-4; CP at 1-20. The motions centered on conflict of laws.[4] CP at 111. Both defendants sought to apply Texas's statute of limitations. CP at 1-2;

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[3] In oral argument, however, the product designer baldly asserted that "there's a million reasons why we would never [have a built-in lock], because it would make the product dangerous for the users." VRP at 25-26. There is no evidence in the record for this assertion, and a jury should decide whether it carries weight, were it supported with admissible evidence.

[4] One defendant alleged a lack of personal jurisdiction. That defendant properly conceded the issue in oral argument. VRP at 32.

CP at 95. The superior court found a conflict of law, VRP at 28-29, applied Texas law, and dismissed the case. VRP at 31.

Mr. Hai timely appeals and respectfully requests that this Court reverse the superior court's decision and hold that Washington has the strongest contacts and greatest interest in ensuring that its residents design and market safe products in accordance with the *Johnson* Court's holding. CP at 117-18.

V. Argument

A. This Court reviews grant of summary judgment *de novo*.

CR 56 governs summary judgment. Summary judgment is only appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Zenaida-Garcia v. Recovery Sys. Tech., Inc.*, 128 Wn. App. 256, 259 n.2, 115 P.3d 1017 (2005). All facts and inferences are construed in favor of the nonmoving party. *Rice v. Dow Chemical Co.*, 124 Wn.2d 205, 208, 875 P.2d 1213 (1994). The standard of review is *de novo*. *See e.g., Rice*, 124 Wn.2d at 208 (reviewing summary judgment); *In re Guardianship of Lamb*, 154 Wn. App. 536, 54, 228 P.3d 32 (2009) (reviewing erroneous view of the law).

B. Texas law does not apply under Washington's conflict of laws analysis.

When laws from different jurisdictions conflict, courts perform a conflict of laws analysis to determine which jurisdiction's laws apply.[5] Long ago, Washington abandoned the doctrine of *lex loci delecti*, the law of the place of injury, in favor of the most significant relationship rule. *Johnson*, 87 Wn.2d at 580. Thus, the rights and liabilities of the parties are determined by the law of the state that has the most significant relationship to the event and the parties. *Zenaida-Garcia*, 128 Wn. App. at 260.

A conflict of laws analysis requires a two-part inquiry. *Zenaida-Garcia*, 128 Wn. App. at 260. First, this Court must evaluate the contacts of each interested state. *Zenaida-Garcia*, 128 Wn. App. at 260. The Washington Supreme Court, in *Johnson v. Spider Staging Corp.*, outlined the following factors that should be analyzed: (1) the place where the

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[5] If a claim is based upon the law of one other state, Washington courts apply that other state's statute of limitations. But, when a claim is based on the law of more than one state, the limitation period of one of those states is chosen by Washington's conflict of laws analysis. RCW 4.18.020. Consistent with CR 44.1, TSA and STL plead that Texas law should apply. CP at [140]; CP at [131]. Foreign law is presumed to be the same as Washington's unless it is pled and proven otherwise. *International Traces of America v. Hard*, 89 Wn.2d 140, 144, 570 P.2d 131 (1977) *Barr v. Interbay Citizens Bank of Tampa, Fla.*, 96 Wn.2d 692, 698, 635 P.2d 441 (1981)

injury occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (4) the place where the relationship, if any, between the parties is centered. *Johnson*, 87 Wn.2d at 580-81.

Second, when the contacts are evenly balanced, the Court evaluates the interests and public policies of the involved states to determine which state has the greater interest in determination of the particular issue. *Zenaida-Garcia*, 128 Wn. App. at 260-61.

As Mr. Hai has demonstrated, the Court should apply Washington law because it has the most substantial relationship to this case. Moreover, even assuming the contacts are balanced, Washington still has greater interests in ensuring its resident companies design, market, and sell safe products to consumers.

C. The Washington Supreme Court opinion in *Johnson v. Spider Staging Corp.* and the Washington Court of Appeals opinion in *Zenaida-Garcia* support applying Washington law in this case.

1. *Johnson v. Spider Staging Corp.* favors the application of Washington law.

In *Johnson v. Spider Staging Corp.*, the Supreme Court considered a case with facts strikingly similar to those at issue here. The claimant in *Johnson*, Geneve Johnson, was the widow of Jack Johnson, who died after

falling from a defectively designed scaffold. *Johnson*, 87 Wn.2d at 578. Mr. Johnson lived in Kansas, his primary place of business was in Kansas, and he ordered the scaffold from defendants' Kansas distributor. Further, Kansas was the place where the injury occurred, where Mr. Johnson fell from the scaffold, and where he ultimately died. *Johnson*, 87 Wn.2d at 581.

The manufacturer defendant, however, was a Washington company, and its primary place of business was in Washington. *Johnson*, 87 Wn.2d at 581. The scaffold was designed and manufactured in Washington, and the scaffold was shipped from Washington to Kansas. *Johnson*, 87 Wn.2d at 581. The Washington defendant manufacturer sought to apply Kansas law because it provided a $50,000 wrongful death limitation. *Johnson*, 87 Wn.2d at 578. The Supreme Court of Washington rejected the request and found that the law of Washington applied, not that of Kansas. *Johnson*, 87 Wn.2d at 582.

The Court recognized that while the injury occurred in Kansas, the place where the conduct causing the injury occurred was in Washington. *Johnson*, 87 Wn.2d at 581. The Court reasoned as follows:

> In this case all the defendants are Washington corporations, and the application of the Kansas wrongful death limitation will not protect Kansas residents. It will merely limit the damages of its own residents. Further, Washington's deterrent policy of full compensation is

> clearly advanced by the application of its own law. Unlimited recovery will deter tortious conduct **and will encourage respondents to make safe products for its customers**. When one of two states related to a case has a legitimate interest in the application of its law and the other state has no such interest, clearly the interested state's law should apply.

Johnson, 87 Wn.2d at 583 (emphasis added).

Similar to the *Johnson* defendants' request to apply Kansas law in an effort to limit their liability to the plaintiff, in the present case, the two defendants sought application of the law of the state of Texas in an effort to obtain summary dismissal of Mr. Hai's claims. The Washington Supreme Court explained that application of the Kansas cap "will not protect Kansas residents. It will merely limit the damages of its own residents." *Johnson*, 87 Wn.2d at 583. In this case, application of the Texas statute of limitations will not protect Texas residents; rather, it will result in the dismissal of a Texas resident's lawsuit.

Just like *Johnson*, this case presents a situation where "one of two states related to a case has a legitimate interest in the application of its law and the other state has no such interest." *Johnson*, 87 Wn.2d at 583. Here, Washington clearly has an interest in applying its laws to ensure that its product designers design safe products, which Texas has no interest in arbitrarily limiting its resident's otherwise valid suits. In such a circumstance, "the interested state's law should apply." *Johnson*, 87

Wn.2d at 583. Since Washington is the only state with an appreciable interest, Washington law must apply. *Johnson*, 87 Wn.2d at 583.

2. *Zenaida-Garcia* favors the applying Washington law.

Similarly, in *Zenaida-Garcia*, the plaintiff asserted a Washington products liability action against the manufacturer. *Zenaida-Garcia*, 128, Wn. App. at 258-59. The trial court granted the defendant's summary judgment motion, applying Oregon's eight year statute of repose over Washington's 12 year statute. *Zenaida-Garcia*, 128, Wn. App. at 259. The appellate court reversed holding that Washington law applies. *Zenaida-Garcia*, 128, Wn. App. at 266.

In *Zenaida-Garcia*, the plaintiff brought the action against a Washington trommel manufacturer on behalf of her deceased brother, Garcia-Munoz, an Oregon resident. *Zenaida-Garcia*, 128, Wn. App. at 258. Garcia-Munoz was working in Oregon, for an Oregon company, when a trommel injured him. *Zenaida-Garcia*, 128, Wn. App. at 258. The plaintiff alleged that the Washington manufacturer sold the trommel initially to a Washington company, who then sold the trommel to an Oregon company, and that the Oregon company in turn sold the trommel to another Oregon company that Garcia-Munoz was working for when he was injured. *Zenaida-Garcia*, 128, Wn. App. at 258.

Although the injury occurred in Oregon, to an Oregon resident, employed by an Oregon company, this Court determined that Washington and Oregon's contacts were evenly balanced because the suit involved a Washington corporation engaged in designing and manufacturing trommels in Washington. *Zenaida-Garcia*, 128, Wn. App. at 263.

When the court applied the second step in the choice of law analysis, the Court reasoned that Oregon's statute of repose was not enacted to limit its own resident's recovery to the benefit of foreign corporations. *Zenaida-Garcia*, 128 Wn. App. at 266. Even though the only real connection to Washington was that the product was designed and manufactured in Washington, this Court also determined that Washington had a significant interest "in deterring the design, manufacture and sale of unsafe products within its borders" and applied Washington law to the case. *Zenaida-Garcia*, 128 Wn. App. at 266.

Similar to *Zenaida-Garcia*, in this case, Mr. Hai is a resident of another state that was injured by conduct occurring in Washington by a Washington corporation. This alone is sufficient to hold that Washington law should apply to this dispute when there is no contract between the injured party and the manufacturer or product seller. *Zenaida-Garcia*, 128, Wn. App. at 263.

However, Washington has an even greater connection to this case than *Zenaida-Garcia* because the evidence shows that the inversion table was also distributed pursuant to a contract signed in Washington, was distributed to the retailer F.O.B. in Washington, and product warnings were issued by the product designer from Washington. When all of these facts are considered together, it is clear that Washington has a stronger connection to this case than that of *Zenaida-Garcia*. As such, this Court should hold that Washington law applies.

Even if this Court determines the contacts are even, then this Court should hold Washington law applies because its interest in deterring the design, manufacture, and sale of unsafe products within its borders is greater than Texas's interests in limiting its own resident's recovery against foreign corporations. *Zenaida-Garcia*, 128 Wn. App. at 266.

2. Washington has the most significant relationship.

Washington has the more significant relationships to the action than Texas when the facts are analyzed under each of the four contacts listed in *Johnson v. Spider Staging Corp.*

a. The place where the injury occurred.

Although the injury occurred in Texas and not Washington, the location of the injury is not dispositive. *See Johnson*, 87 Wn.2d at 580-81. As the court explained in *Johnson,* if this were a determinative factor,

there would be no need to depart from the *lex loci* test and adopt the most significant relationships test. *Id.* Notably, when appellate courts have analyzed this issue in similar factual scenarios, this factor has been found to favor finding that Washington law applied.

b. The place where the conduct causing the injury occurred favors Washington.

Second, the conduct alleged by Mr. Hai to have caused the injury occurred in Washington and to a lesser extent Colorado. *See Johnson*, 87 Wn.2d at 580-81. For example, the product designer's conduct in defectively designing the product and issuing defective warnings all occurred in Washington. CP at 126. Moreover, the design and conceptualization of marketing campaigns for the product occurred in Washington. CP at 151. Purchases of the product are specifically told in the product's manual to contact STL at its Washington office for assistance. CP at 177-90. The product designer signed its contract to sell the product to the retailer in Washington. CP at 151. Other than the fact that one of its products was brought to Texas after being sold in Washington, the product designer does not have any connection with Texas and none of the designer's conduct causing Mr. Hai's injury is alleged to have occurred in Texas. In other words, the tortious activity that was the proximate cause of Mr. Hai's severe injuries – the activity

sought to be regulated under Washington's product liability laws – occurred in Washington by a Washington corporation. As such, Washington law should apply.

Similarly, the retailer's negligence causing the injury did not occur in Texas. The retailer's decision of how, where, and when to display the product at issue in its stores was made at its corporate headquarters in Colorado. CP at 144-46. The store's layout, construction and remodeling were overseen by the retailer's construction department in Englewood, Colorado. CP at 197. The only expert witness in this case opined that the retailer's architecture and store design was a substantial factor in the accident, which was overseen by its construction department in Colorado. CP at 162. Additionally, the failure to develop adequate safety procedures to govern this product while displayed at its retail stores occurred in Colorado at a corporate level, not in Texas. CP at 144. As such, these negligent acts occurred outside of Texas, further proving that Texas does not have a relationship with this case.

More importantly, the negligence of the retailer establishes its liability under the Washington Product Liability Act as a product seller. In its motion for summary judgment, the retailer tried to narrowly limit the applicability of the Washington Product Liability Act by arguing that its only negligent actions occurred in Texas. CP at 8. Plaintiff's claim,

however, is based in part on the retailer's negligence as a product seller in establishing safety protocols for this device. Appendix A at 4. Specifically, the retailer's safety procedures were not reasonable or reasonably comprehensive in that the device was in an operational state and inherently dangerous. *See* CP at 162. Further, the retailer had a duty to create a more systematic approach to the safety of its equipment, such as a corporate headquarters-designed and -implemented follow up to its December 1, 2008, memo to ensure that the stores at the local level were using the provided safety equipment. *See* CP at 162. In short, the retailer knew at a corporate level that it was displaying a dangerous product, and had it taken better precautions, the accident would not have occurred. *See* CP at 162. Although this negligence took place in Colorado, not Texas, it still triggers its liability under the Washington Product Liability Act because the retailer is a product seller.

c. The domicile, residence, nationality, place of incorporation and place of business of the parties favors Washington.

Third, the domicile, residence, nationality, place of incorporation and place of business of the parties favors significant contact with Washington and not Texas. *See Johnson*, 87 Wn.2d at 580-81.

Although Mr. Hai was a Texas resident at the time of the accident, CP at 53, the product designer is a Washington corporation that bases its

business in Washington and conducts business in Washington. CP at 129; and CP at 151. It has a registered agent in Washington. *See* CP at 129. The retailer defendant is a Delaware corporation with its principal place of business in Colorado that does business in many states, including Washington. CP at 137. Specifically, it has 13 stores in the state of Washington. *See* CP at 136-42; and CP at 192. When weighed together, these facts favor application of Washington law because both defendants conduct substantial business in Washington.

d. The relationship center, if any, is Washington.

Fourth, the place where the relationship, if any, between the parties is centered favors Washington. This factor is not generally applicable here, because the parties do not have a "relationship" that is centered in any given location. *See Johnson*, 87 Wn.2d at 580-81. However, to the extent this factor does apply, the only established relationship in this case actually centers in Washington between STL and TSA because Washington is where STL signed the purchase contract and where the retailer took possession of the product. CP at 151; and CP at 190. Thus, the relationship of the parties favors Washington.

e. Balancing all the contacts together, Washington has more significant contacts than Texas.

Contacts are evaluated according to their relative importance with respect to the particular issue. *Johnson*, 87 Wn.2d at 581. Here, although

the injury occurred in Texas, the other remaining contacts strongly favor Washington. Most importantly, the conduct that caused the injury, and which Washington product liability laws seek to regulate, occurred in Washington, not Texas. When balancing contacts, Washington has more numerous and stronger contacts to the conduct at issue in the suit, and the superior court erred in applying Texas law.

3. Even if Washington's contacts with both defendants are equal to Texas, Washington's interest and public policies favor applying Washington law.

In the alternative, if Washington's contacts with the case are equal to Texas, Washington law should still apply. "When one of two states related to a case has a legitimate interest in the application of its law and the other state has no such interest, clearly the interested state's law should apply." *Johnson*, 87 Wn.2d at 583.

Here, the superior court mistakenly identified the most significant difference between Washington and Texas law as the difference in statute of limitation periods. VRP at 28-29.[6] However, foreign states' interests are not furthered by limiting or absolving the liability of Washington corporations to the detriment of their own residents' recovery. *See*

[6] Texas's state of limitation period for personal injury and product liability actions is two years. Tex. Civ. Prac. & Rem. Code § 16.003(a). Washington's statute of limitations for product liability and personal injury is three years. RCW 4.16.080; 7.72.060(3).

Zenaida-Garcia, 128 Wn. App. at 265-66 (discussing *Johnson v. Spider Staging* and *Martin v. Goodyear Tire & Rubber Co.*, 114 Wn. App. 823, 61 P.3d 1196 (2003)).

The purpose of Washington's statute of limitations is to protect defendants from stale claims. *Burns v. McClinton*, 135 Wn. App. 285, 293, 143 P.3d 630 (2006). As time elapses, evidence may be lost, memories may fade, and witnesses may disappear. *Central Washington Refrigeration, Inc. v. Barbee*, 133 Wn.2d 509, 521, 946 P.2d 760 (1997). Similarly, Texas's statute of limitations is designed to afford plaintiffs a reasonable time to present their claims and protect defendants from having to deal with cases where the search for truth may be seriously impaired by loss of evidence, fading memories, or disappearance of documents. *Kerlin v. Sauceda*, 263 S.W.3d 920, 925 (Tex. 2008).

Here, there are no claims that evidence has been lost, memories have become inadequate, or that witnesses have disappeared. Thus, applying Texas law would not serve its statute's purpose. Instead, defendants sought to use Texas's statute to bar this action and avoid liability, even though Texas has little interest in applying its law. Notably, Texas, has no interest in applying its statute of limitations to limit its residents from recovery against a foreign corporation. *See Zenaida-Garcia*, 128 Wn. App. at 265-66. Therefore, Texas's interests are not

furthered by applying its statute of limitations to absolve a Washington or Colorado corporation's liability.

Just like the Court in *Zenaida-Garcia* held, when the contacts are evenly matched, Washington law should apply because it has a strong interest in deterring the design, manufacture, and sale of unsafe products within its borders. *See Zenaida-Garcia*, 128 Wn. App. at 266. This policy interest far exceeds any interest that Texas has in limiting the recovery of its residents. Thus, to the extent the contacts are equal, Washington law should apply.

VI. Conclusion

Washington's strong interest in encouraging its companies to design, manufacture and market safe products, even those products that are distributed to other states, controls over the interests of other states to cap, limit, or excuse the negligent conduct of tortfeasors. Therefore, this Court should reverse the superior court's decision to grant summary judgment.

Respectfully submitted this 13th day of December, 2012.

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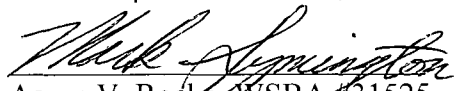

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VII. Appendices

Appendix A: Complaint

Appendix B: Declaration of Jef Nelson

Declaration of Service

I caused a copy of the foregoing Appellant's Opening Brief to be served on the following in the manner indicated below:

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on today's date.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my belief.

SIGNED this 13th day of December, 2012, at Seattle, Washington.

Jessica Williams

Jessica Williams, Legal Assistant

Appendix A

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF PIERCE

SHAOUL S. HAI, an individual, Plaintiff, vs. STL INTERNATIONAL, INC., a Washington Corporation, and TSA STORES, INC., a Delaware Corporation, Defendants.	Case No.: COMPLAINT

Plaintiff Shaoul S. Hai, complains and avers as follows:

I. PARTIES, JURISDICTION, AND VENUE

1.1 Status of Plaintiff. Shaoul S. Hai, is an individual, and at all times material hereto, resides in Texas.

1.2 Status of Defendant STL International, Inc. STL International, Inc. is a Washington corporation with its main office located in Puyallup, Washington, doing business as Teeter.

1.3 Status of Defendant TSA Stores, Inc. TSA Stores, Inc., is a Delaware corporation headquartered in Englewood, Colorado, doing business as The Sports Authority nationwide, including in Washington.

1.4 Jurisdiction. Defendant STL International, Inc., is and has been at all times pertinent hereto a Washington Corporation doing business in Pierce County Washington, and

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maintaining stores in Pierce County, Washington. Defendant TSA Stores, Inc., is a foreign corporation doing business in Pierce County, Washington. This court has jurisdiction over all parties, and subject matter jurisdiction over this action pursuant to RCW 2.08.010.

1.5 Venue. Venue in Pierce County is proper because STL International, Inc. transacts business in Pierce County, and transacted business in Pierce County at the time this cause of action arose. RCW 4.12.025.

II. FACTS

A. Mr. Hai was injured by an STL International Product, on premises occupied by TSA Stores, Inc.

2.1 On February 8, 2009, Mr. Hai was shopping for stationary bicycles in the Sports Authority store.

2.2 Mr. Hai reached a point in the store near some inversion machines, including the Teeter Hang-Up manufactured and marketed by STL Internaional, Inc. The Hang-Up was not secured by any chain or tie-down.

2.3 With his back to the Teeter Hang-Up, Mr. Hai was moving to look at another piece of equipment. He tripped on the Hang-Up's bottom support tubing, which extended out from the bottom of the machine.

2.4 As Mr. Hai fell, the inversion table of the Hang-Up flipped up, causing Mr. Hai's body to be thrown into the air. He fell to the ground, injuring his neck.

2.5 While Mr. Hai was awaiting the ambulance, the store manager arrived to write an incident report and to chain down the Hang-Up so it would not move or injure other customers.

B.

2.6 As a result of the incident, Mr. Hai suffered a number of serious injuries. A CT scan revealed a fracture in his neck, and he was forced to wear a neck brace for several months.

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He began to have headaches regularly. He experienced consistent numbness in his feet and arms. He continues to experience sleeping and pain. He has been given a permanent disability classification by the Texas Department of Transportation due to his limitations and inability to turn his neck more than 30%.

2.7 The effects of his injuries have also aggravated his pre-existing medical conditions. The injury exacerbated the breathing problems, causing sleep apnea, and the medications prescribed for the injuries contributed to these as well.

III. CAUSES OF ACTION

A. Claims arising under Washington Product Liability Act (RCW 7.72.010 *et seq*).

3.1 STL International, Inc., is a manufacturer within the meaning of the WPLA (RCW 7.72.010(1)), and has a duty to supply reasonably safe products.

3.2 TSA Stores, Inc., is a product seller under Washington Law, whose negligence (in part) caused Mr. Hai's injuries.

3.3 The manufacturer breached its duty to supply a product that was reasonably safe at the time it left STL International's control. The product was unreasonably dangerous in that it was likely to, and in fact did, flip up suddenly and unexpectedly.

3.4 The manufacturer is liable under the statute (RCW 7.72.030) and common law by several possible theories:

3.4.1 **Defect in Manufacture or Construction**: The product was not reasonably safe due to a defect in manufacture.

3.4.2 **Defect in Design**: The product was not reasonably safe as designed, or the design was unreasonably dangerous given the cost of a reasonable alternative and the expectations of a reasonable consumer.

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3.4.3 **Defective Warning**: The product lacked sufficient warnings that it was prone to flipping up with minimal stimulus, where such warnings would have alerted the consumer to the danger of walking near the product.

3.5 Given the dangerous nature of the product, TSA Stores, Inc., was negligent in positioning the product in such a way that a consumer might trip on it and cause it to "flip up." It is liable under RCW 7.72.040(1)(a).

3.6 It was foreseeable to the manufacturer that a customer of a retailer to which it sent its products might trip over the product, and such "use" is not "misuse."

3.7 The product defects were the actual and proximate cause of Mr. Hai's fall and the severity of his resultant injuries.

B. Premises Liability (Negligence)

3.7 As a customer at The Sports Authority, Mr. Hai was a business invitee, invited to remain on the premises for a purpose directly connected with the business of the possessor of the premises.

3.8 The Sports Authority is liable to a business invitee for any unsafe condition if the occupier is or should be aware of the unsafe condition. It has a duty to inspect for unsafe conditions and to repair, safeguard, or warn as may be reasonably necessary for the invitee's protection under the circumstances.

3.9 By leaving the Hang-Up in an area where a customer was likely to trip over it, by failing to restrain it or otherwise prevent it from "flipping up," and by failing to provide adequate warnings as to the dangers the product represented, The Sports Authority breached its duty to Mr. Hai as business invitee.

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3.10 As a direct and proximate result of this breach, Mr. Hai suffered serious injury, and has experienced pain, suffering, and mental anguish.

3.11 Because of these injuries, Mr. Hai has been injured in an amount to be determined at trial.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for judgment as follows:

(1) For judgment against defendant for general and special damages, including past and future medical expenses, lost wages, loss of earning capacity, permanent partial disability, and pain and suffering;

(2) For an order requiring the manufacturer to provide restraints to prevent this type of accident in the future, and requiring the retailer to use such restraints to prevent injury to its customers;

(3) For an award of attorney's fees and taxable costs;

(4) For an award of prejudgment interest; and

(5) For such other and further relief as the Court may deem just and proper.

Dated this 22nd day of December, 2011.

ROCKE | LAW Group, PLLC

/s/

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Appendix B

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

SHAOUL S. HAI, an individual, Plaintiff, vs. STL INTERNATIONAL, INC., a Washington Corporation, and TSA STORES, INC., a Delaware Corporation, Defendants.	No. 11-2-16871-4 DECLARATION OF JEF NELSON

I, JEFFREY W. NELSON, state and declare as follows:

1. I am over the age of 18 and competent to testify on the facts stated herein, all of which are based upon my review of file materials, which are listed below.

2. I am the owner of Shogun Fitness and have six years of personal training experience. I possess multiple certifications, including NASM Performance Enhancement Specialist, and CrossFit I. In addition, I am member of the accreditation advisory board for the National Personal Training Institute.

3. I have also been a personal trainer and fitness manager at multiple local, regional, and national gyms. As a fitness manager, I supervised and trained other personal trainers. My job was to teach trainers and clients how to be safe, and I coordinated with the maintenance staff

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and management about the maintenance of equipment and safety of equipment, such as broken or unsafe equipment. Gyms typically also have areas designated for retail sales.

4. I have witnessed people get injured in and around fitness equipment. As a personal trainer, I have education, training, and experience in observing people interacting with and around fitness equipment and teaching people how to use equipment properly. One of the main goals of personal trainers is teaching people how to use equipment safely and prevent injury around fitness equipment.

5. In preparation for this declaration, I reviewed the following documents:

a. Complaint;

b. Answers to Complaint;

c. TSA Stores, Inc.'s answers to Plaintiff's First Requests for Admission, with supplementary responses;

d. TSA Stores, Inc.'s answers to Plaintiff's First Set of Interrogatories and Requests for Production, with supplementary responses;

e. STL International, Inc.'s Responses to Plaintiff's First Set of Interrogatories and Requests for Production; and

f. Select TSA Stores, Inc.'s documents produced as part of discovery: part 1 of RFP No. 13; RFP No. 3(1)(2); the memo and safety lock produced at RFP No. 3(2)(2);.

6. In forming my opinion, I assume the safety lock apparently provided by STL was not in place at the time of the accident and that the accident happened as described, or substantially similar, to the description in the complaint. I have observed one or more Sports Authority stores and have a general familiarity with their layout.

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7. Based on my review of the documents, I have formed an opinion to a reasonable degree of certainty as to whether TSA Stores, Inc. policies and procedures, and whether actions or omissions of TSA were a substantial factor in the personal injury of Mr. Hai.

8. My opinion is that TSA Stores, Inc. safety procedures regarding this device were not reasonable or reasonably comprehensive in that the device was in an operational state and inherently dangerous. It was foreseeable that a person, including a customer, could come into inadvertent contact with the equipment resulting in injury. TSA's duty was to create a more systematic approach to the safety of their equipment, such as a corporate headquarters designed and implemented follow up to their December 1, 2008, memo to ensure that the stores at the local level were using the provided safety equipment. The fact that there is a memo memorializes that TSA understood that there was a risk, but the memo itself is insufficient to mitigate that risk. There is also a sense that the layout of the store or its architecture was a substantial factor in the accident. It appears TSA chose to carry and display an inversion table, unlike the Reebok inversion table, that did not have a built-in lock. Had TSA taken better precautions, it is likely that the injury would not have happened or would have caused less significant injuries.

9. Based on my review of the documents, I have formed an opinion to a reasonable degree of certainty as to whether STL International Inc.'s actions or omissions were a substantial factor in the personal injury of Mr. Hai.

10. An inversion table without a built-in lock is inherently more dangerous than a table with a built-in lock. It was foreseeable that a person could come into inadvertent contact with the equipment resulting in injury. Because the lock for this product was removable, there was a foreseeable risk that the lock would not be used. The fact that STL provided a lock

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demonstrates that they recognized the inherent danger of the product, but the removable lock does not address the underlying safety issue of the design that lacks a built-in lock.

11. I have seen and used multiple inversion tables. I do not recall ever seeing an inversion table that did not have a built-in lock. In my experience, it seems to be the industry standard to design inversion tables with built-in locks. Had STL taken better precautions in its design, it is likely that the injury would not have happened or would have caused less significant injuries.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED this 13th day of June, 2012, at Seattle, Washington.

Jef Nelson

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